

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, : NO. 1:06-CV-00185
: :
v. : OPINION AND ORDER
: :
CONTENTS OF SMITH BARNEY :
CITIGROUP ACCOUNT NO. 3419 :
IN THE NAME OF HARRIET :
WARSHAK, et al. :
:

This matter is before the Court on Claimants' Motion to Dismiss and Dissolve Pre-Complaint Warrants (doc. 32), the government's Response in Opposition (doc. 46), and Claimants' Reply (doc. 49); Claimants' Motion to Dismiss Class Action Plaintiffs' Amended Verified Complaint and Answer (doc. 54), the Response in Opposition (doc. 59), and Claimants' Reply (doc. 61); Claimant's Motion for Leave to File Sur-Reply Memo in Opposition to Government's Motion to Stay (doc. 60); Claimants' Motion to Unseal Ex Parte Submissions (doc. 66), and the government's Response (doc. 70); and the United States' Motion for Leave to File Supplemental Authority (doc. 68). For the reasons indicated herein, and for those in a companion order issued today in United States v. Contents of Nationwide Life Insurance Annuity Account No. 0961, No. 1:05-CV-00196, which the Court incorporates by reference as indicated herein, the Court GRANTS the government's Motion for Leave to File Supplemental Authority, HOLDS IN ABEYANCE Claimants'

Motion to Dismiss Class Action Plaintiffs' Verified Complaint and Answer, and DENIES the balance of the pending motions.

I. Background

The Court lifted the stay in this matter, (doc. 76), subsequent to the completion of the criminal trial, and subsequent to the jury's findings that many of Defendants' assets were linked to the criminal activity of which they were found guilty, and/or the assets were involved in or traceable to money laundering activity. The following Defendants in this case were among those assets: (Defendant 1) Contents of Smith Barney Citigroup Account Number 3419, (Defendant 5) Contents of Fifth Third Bank Account No. 7094, (Defendant 6) Proceeds from the Sale of Real Property Known and Numbered as 8153 Darlene Terrace, Middletown, Ohio 45044, and (Defendant 12) Contents of Fifth Third Bank Account No. 6494. It remains for the Court to determine what portion, if any, of such assets are forfeitable to the government. The remaining assets listed in this civil case were not a part of the criminal forfeiture matter.

Another relevant development in this case, during the pendency of the stay, is that the state class action Plaintiffs reached a settlement with Defendants (doc. 75). The Court understands that Defendants have been meeting their obligations in constituting a settlement fund, but that the settlement has not yet been fully consummated. The Court addresses the pending motions

seriatum:

II. Claimants' Motion to Dismiss and Dissolve Pre-Complaint Warrants (doc. 32), the Government's Response in Opposition (doc. 46), and Claimants' Reply (doc. 49)

Claimants' Motion to Dismiss tracks that filed in the companion case, No. 1:05-CV-00196, and today's Order, Section IV in that case, rejects Claimant's argument that the government's complaint failed to adequately contain sufficient facts to support a reasonable belief that the government could demonstrate probable cause for finding the subject property tainted. The Court incorporates its reasoning in the companion case here, rejects Claimants' arguments, and DENIES their motion.

III. Motion to Dismiss Class Action Plaintiffs' Amended Verified Complaint and Answer (doc. 54), Response in Opposition (doc. 59), and Claimants' Reply (doc. 61)

Due to the fact that the class action plaintiffs have reached a settlement with Defendants that is not fully consummated, the Court finds it appropriate to hold a status conference on this motion. At such conference the Court will hear the parties on the pertinence of this pending motion.

IV. Claimant's Motion for Leave to File Sur-Reply Memo in Opposition to Government Motion to Stay (doc. 60)

As the Court already granted and lifted a stay of this matter, this Motion is DENIED as MOOT.

**v. Claimants' Motion to Unseal Ex Parte Submissions (doc. 66),
the Government's Response (doc. 70)**

This Motion tracks that filed in the companion case, No. 1:05-CV-00196, and today's Order, Section VII in that case, rejects Claimants' argument. The Court finds that work product protections attach to the government's material, that the evidence in this case originated from Defendants, and that subsequent to the criminal trial, Defendants are aware of the evidence in the record against them. Under the same rationale of the companion case, the Court DENIES Claimants' Motion.

VI. United States' Motion for Leave to File Supplemental Authority (doc. 68)

Finally, again, for the same reasons in the companion case, No. 1:05-CV-00196, and today's Order, Section I, in that case, the Court finds it appropriate to GRANT the government's motion.

VII. Conclusion

For the reasons indicated herein, the Court DENIES Claimants' Motion to Dismiss and Dissolve Pre-Complaint Warrants (doc. 32), HOLDS IN ABEYANCE Claimants' Motion to Dismiss Class Action Plaintiffs' Amended Verified Complaint and Answer (doc. 54), DENIES AS MOOT Claimant's Motion for Leave to File Sur-Reply Memo in Opposition to Government Motion to Stay (doc. 60); DENIES

Claimants' Motion to Unseal Ex Parte Submissions (doc. 66), and GRANTS the United States' Motion for Leave to File Supplemental Authority (doc. 68). The Court further sets a status conference in this matter for May 15, 2008 at 10:30 A.M.

SO ORDERED.

Dated: April 9, 2008

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge